

Decision 06-01-034 January 26, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the
Commission's Future Energy Efficiency Policies,
Administration, and Programs.

Rulemaking 01-08-028
(Filed August 23, 2001)

**OPINION GRANTING INTERVENOR COMPENSATION
TO THE UTILITY CONSUMERS' ACTION NETWORK**

I. Summary

This decision awards the Utility Consumers' Action Network (UCAN) \$76,180.90 in compensation for its substantial contribution to Decision (D.) 05-09-043, through its participation in San Diego Gas & Electric Company's (SDG&E) program advisory and peer review groups for energy efficiency program planning, established by D.05-01-055 in this proceeding.

II. Background

D.05-01-055 established a new administrative framework for energy efficiency programs for 2006 and beyond that includes the formation of program advisory groups (PAGs) by each of the major energy utilities.¹ The utilities are additionally required to identify non-financially interested members from each PAG to serve on a subgroup that will, among other things, review the utility's

¹ They are: SDG&E, Pacific Gas and Electric Company, Southern California Gas Company and Southern California Edison Company, collectively referred to as "the utilities."

bid selection process for program implementers and compliance filings. These PAG subgroups are referred to as the energy efficiency peer review groups, or “PRGs.”

Consistent with the treatment of advisory groups on the supply-side, the Commission determined in D.05-01-055 that those parties eligible to receive intervenor compensation for awards in energy efficiency proceedings should be eligible to seek compensation for their work as utility advisory group members.² SDG&E invited UCAN to serve on its advisory group and peer review subgroup in February 2004, which prompted UCAN’s involvement in the post-2005 program planning process on behalf of SDG&E ratepayers in this proceeding.

The Commission’s energy efficiency program involves long-term strategies and elements. The subject rulemaking, or successor proceedings, will remain open to address ongoing policy and program implementation issues. By ruling dated April 4, 2005, Administrative Law Judge (ALJ) Gottstein clarified where and when UCAN and other utility advisory group members should submit their future request(s) for compensation based on their energy efficiency advisory group participation. She noted that advisory group meetings for post-2005 program planning and funding were currently underway and that advisory group activities would continue on an ongoing basis throughout each three-year program cycle, per D.05-01-055. The ruling states:

“It would be enormously confusing to UCAN (or other advisory group members) to file their request(s) for compensation in new application dockets that will be opened over time to address specific program planning and funding

² D.05-01-055, mimeo., p. 95.

cycles. Instead, the procedural forum for the Commission's consideration of UCAN's requests for intervenor compensation for its participation in SDG&E's PAG and PRG will be this generic energy efficiency rulemaking, or its successor proceeding."³

On June 1, 2005, the utilities filed their energy efficiency program plan applications for program years 2006-2008, as directed by the Commission. SDG&E's Application (A.) 05-06-016 was consolidated with those of the other utilities and addressed by the Commission in D.05-09-043.

III. Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires that the intervenor satisfy all of the following procedures and criteria to obtain a compensation award:⁴

1. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
2. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)

³ *Ibid.* pp. 8-9.

⁴ All section references in this decision refer to the Public Utilities Code.

4. The intervenor must demonstrate significant financial hardship. (§ 1804(b)(1).)
5. The intervenor's presentation must have made a substantial contribution to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§ 1803(a).)
6. The claimed fees and costs are reasonable and are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-3 above are combined, followed by separate discussions on Items 4-6.

IV. Procedural Issues

UCAN filed its NOI on March 2, 2005. On April 4, 2005, ALJ Gottstein ruled that UCAN is a customer pursuant to § 1802(b)(1)(C), and that UCAN timely filed its NOI. We affirm the ALJ's ruling. UCAN filed its request for compensation on October 21, 2005, within the required 60 days of D.05-09-043. No comments or protests were filed in response.

V. Financial Hardship

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding. In the case of groups or organizations, significant financial hardship is demonstrated by showing that the economic interest of individual members is small compared to the overall costs of effective participation.⁵

⁵ Section 1802(g).

Pursuant to § 1804(a)(2)(B), UCAN made a showing of financial hardship in this proceeding in its compensation request. UCAN asserted financial hardship through a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), as a finding to meet this requirement was made in another proceeding within one year of the commencement of this proceeding (ALJ Ruling dated March 1, 2001, in Case 00-08-040). As an update, UCAN notes it was again ruled to have met the financial hardship by an ALJ Ruling dated June 28, 2005, in A.05-02-019.

We find that UCAN meets all of the procedural requirements, including financial hardship, to claim compensation in this proceeding.

VI. Substantial Contribution

UCAN serves with six other non-financially interested entities on SDG&E's PRG (including the Commission's Office of Ratepayer Advocates (ORA), Energy Division and the California Energy Commission), and approximately 20 other organizations on SDG&E's PAG. The attachments to UCAN's request for compensation document that UCAN has been an active participant in SDG&E's advisory group process since the selection of advisory group members in February 2005. In particular, UCAN attended general PAG meetings throughout the development of SDG&E's June 1 filings on portfolio plans and budgets, participated in sub-committee meetings on specific topics, and reviewed PAG materials for those meetings. In addition, UCAN provided in-person consultation with SDG&E program managers and with the full PAG group utilizing the expertise of its technical consultants.

As a PRG member, UCAN also participated in the development of the written PRG assessment of SDG&E's proposed portfolio plans, as required by D.05-01-055. Finally, consistent with the Commission's direction in D.05-09-043,

UCAN reviewed SDG&E's materials for the PRG review of third-party responses to SDG&E's competitive solicitations, and participated in the PRG meetings on third-party programs.

The attachments to UCAN's request provide an hourly breakdown of time spent by UCAN's attorney and UCAN's technical consultants, with a brief description of activities associated with those hours. We agree with UCAN that an issue breakdown is not feasible given the breadth of issues explored by the advisory groups during the 2006-2008 planning process, particularly since this was the first planning cycle following the establishment of new policy rules, energy efficiency goals and a new administrative structure for post-2005 energy efficiency activities. The PAG and PRG members analyzed and discussed numerous issues, including residential and large customer program design and funding issues, cost-effectiveness methodology, data availability issues, and legal and procedural matters.

As discussed in D.05-01-055, the advisory group and PRG members "all burned the midnight oil for many weeks to develop and analyze portfolio plans that were responsive to the new energy efficiency rules adopted in April, 2005." We also noted that "the advisory group process established by D.05-01-055 was constructive and collaborative." Based on the submittals in A.05-06-016 et al., we concluded that this process "has served this Commission well" in reaching our determinations in D.05-09-043.⁶ UCAN's participation in SDG&E's PAG and PRG was an integral part of the constructive and collaborative process described in that decision, and clearly contributed to the substantive resolution of issues in

⁶ D.05-09-043, mimeo., p. 93.

D.05-09-043. Although not all of the specific recommendations contained in the SDG&E PRG assessment were adopted by that order, they helped frame the threshold issues for debate in this proceeding. Moreover, the vast majority of PRG/PAG portfolio design recommendations were carefully considered and incorporated into SDG&E's portfolio plans prior to its filing, as documented in that submittal.

In sum, we conclude that UCAN made a substantial contribution to SDG&E's PAG and PRG, and in turn made a substantial contribution to D.05-09-043 and the compliance activities that followed from that decision.

VII. Reasonableness of Requested Compensation

UCAN requests \$76,180.90 for its participation in SDG&E's advisory group process from February through mid-October 2005, as follows:

Michael Shames, attorney/expert, (135.2 hours @\$300 per hour) ⁷	\$40,560.00
Mark Thayer, policy expert, (162.2 hours @200 per hour)	\$32,440.00
Jeff Schlegal, policy expert, (24 hours @\$135/hour)	\$ 3,180.90
Incidental Expenses	.00
Total Claim:	\$76,180.90

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation that resulted in a substantial

⁷ UCAN submitted an hourly rate for Shames of \$250 in its NOI, to reflect 2004 rates awarded for Shames' work, but notes a request for a \$300 hourly rate in Rulemaking 04-10-010, where the Commission is reviewing hourly compensation rates for 2005. UCAN requests that the higher rate (\$300) be used in this award pursuant to the principles contained in D.05-11-031.

contribution. UCAN documented its claimed hours by presenting a daily breakdown for its representatives, accompanied by a brief description of each advisory group activity, including (1) reviewing advisory group materials distributed before meetings, (2) attending advisory group meetings, (3) preparing technical presentations for the meetings, and (4) writing and reviewing PRG assessments. The documentation reasonably supports the claim for total hours.

In determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. Based on those considerations, D.05-11-031 sets forth principles to govern hourly rates for intervenors' representatives for qualifying hours worked in calendar year 2005. UCAN supported its requested hourly rates with an explanation in its compensation request, and in a later response to the assigned ALJ requesting clarifying information.

In D.05-11-031, the Commission established an hourly rate range of \$270-\$490 for 2005 work for attorneys with 13+ years of experience since completion of law school. Attorney Shames has over 20 years' experience in utility matters and has participated in Commission proceedings this entire time. He was previously awarded a \$250/hour rate for work performed in 2003 and 2004 (D.05-10-031). In this proceeding, Shames is acting in the dual role of attorney and expert witness for UCAN. The \$300 rate is within the range prescribed in D.05-11-031, and at the low end of attorneys with similar experience. We find that Shames' request is reasonable and adopt a \$300 hourly rate.

UCAN policy expert Thayer holds a doctorate degree in Economics. He has been a professor of Economics since 1979, is Department Chair of Economics

at San Diego State University since 1997, and has published extensively on issues relating to utilities and the environment. He was also selected by the Commission to serve on the California Board for Energy Efficiency (CBEE) from 1997-2000. D.05-11-031 set forth an hourly rate range for experts for 2005 of \$110-\$360. We find the \$200 hourly rate for Thayer reasonable, in light of his experience and education, and adopt it here.

UCAN's policy expert Schlegal is an independent consultant specializing in policy analysis and program design for energy efficiency, renewable energy, and low-income energy programs. Schlegal has more than 20 years' experience in energy matters and served on the CBEE as a technical consultant from 1997-2000. The hourly rate of \$135 requested for Schlegal is at the low-end of the range for experts provided in D.05-11-031. We find this rate reasonable and adopt it here.

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity. In its request, UCAN describes how it worked in a very closely coordinated fashion with other advisory participants, in a manner that did not duplicate efforts and substantially contributed to the development of SDG&E's energy efficiency portfolio plans. Although UCAN did not present a dollar value of the benefits of its advisory group participation, we note that the adopted utility program plans are expected to produce \$2.7 billion in net resource benefits (resource benefits minus costs) over the life of the measures, and are capable of avoiding the equivalent of three giant (500 megawatt power plants over the next three years. In addition, the Commission projects that the energy savings resulting from the measures installed during that period would reduce global warming pollution by an estimated 3.4 million tons of carbon dioxide in 2008, equivalent to taking

about 650,000 cars off the road.⁸ Overall, we find that UCAN's efforts have been productive.

VIII. Award

As set forth in the table above, we award \$76,180.90.

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on January 4, 2006, the 75th day after UCAN filed its compensation request, and continuing until full payment of the award is made.

The compensation UCAN seeks is directly related only to SDG&E's 2006-2008 energy efficiency portfolio plans, and not those of the other major energy utilities. Therefore, we direct SDG&E to pay the full award.

We remind UCAN, like all intervenors, that Commission staff may audit UCAN's records related to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation.

VIII. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

IX. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Meg Gottstein is the assigned ALJ in this proceeding.

⁸ D.05-09-043, mimeo., p. 3.

Findings of Fact

1. UCAN has met all the procedural requirements to claim compensation in this proceeding.
2. We affirm the April 4, 2005 ruling of the assigned ALJ.
3. UCAN substantially contributed to D.05-09-043, through its participation in SDG&E's 2006-2008 energy efficiency program advisory group and peer review subgroup.
4. UCAN requested hourly rates for attorneys and experts that are reasonable when compared to the market rates for persons with similar training and experience, based on the guidelines established in D.05-11-031.
5. The total of these reasonable rates is \$76,180.90.
6. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. UCAN has fulfilled requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed fees for participating in SDG&E's energy efficiency advisory groups from February through mid-October, 2005.
2. The comment period should be waived, and today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Utility Consumers' Action Network is awarded \$76,180.90 as compensation for its contributions to Decision 05-09-043, through its participation in the Program Advisory Group and Peer Review Group of San

Diego Gas & Electric Company (SDG&E) from February through mid-October, 2005.

2. Within 30 days of the effective date of this decision, SDG&E shall pay UCAN this award.

3. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning on January 4, 2006, the 75th day after the filing date of UCAN's request for compensation, and continuing until full payment of the award is made.

4. The comment period for today's decision is waived.

This order is effective today.

Dated January 26, 2006, at San Francisco, California.

MICHAEL R. PEEVEY

President

GEOFFREY F. BROWN

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

Commissioners

Compensation Decision Summary Information

Compensation Decision:	D0601034	Modifies Decision?
Contribution Decision(s):	D0509043	
Proceeding(s):	R0108028	
Author:	ALJ Gottstein	
Payer(s):	San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Utility Consumers' Action Network	10/21/05	\$76,180.90	\$76,180.90	No	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michael	Shames	Attorney	Utility Consumers' Action Network	\$300	2005	\$300
Mark	Thayer	Policy Expert	Utility Consumers' Action Network	\$200	2005	\$200
Jeff	Schlegal	Policy Expert	Utility Consumers' Action Network	\$135	2005	\$135